For example, many HSD distributors collect fees for programming services on an annual basis but only remit the monies monthly to programming vendors. Thus, if a particular programming distributor collected the entire fee for a year and after six months either went bankrupt or refused to continue paying the vendor, the programming vendor would be in a difficult position; the vendor could continue to serve the subscriber who has "paid" for the service but not receive any remuneration for that service. But cutting off service may undermine future sales of the programming in that market. Accordingly, it would be virtually impossible to "quantify" a differential based on these listed items conceivably related to actual business practices. More established vendors may not want the added risk, and newer, smaller vendors may be willing to assume it.

Vendors should be allowed to use these items as grounds for reasonably refusing to deal with any FBO or distributor. Because the failure of a distributor in marketing programming in a particular market may be due to the existence of any one of a number of these factors -- including a reputation for instability or technical inferiority -- the unhappy distributor should be required to prove that it has adequately satisfied these requirements.[36/] As set forth in the discussion of standard

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36/ Although none of the HSD distributors has a facility that could be considered part of the delivery of the programming

[Footnote Continued Next Page]

differentials, these considerations would allow variations without requiring proof of actual "costs' in determining whether a distributor was especially "risky".

The regulations also allow for price differentials based on "actual and reasonable differences in the cost of creation, sale, or delivery or programming" as well as differentials attributable to "economies of scale, cost savings or other direct and legitimate economic benefits that are reasonably attributable for the number of subscribers served." NPRM ¶ 17. These factors, by dealing with cost issues, may be measured more objectively. However, the difficulty in identifying all appropriate "cost" and "economic benefit" factors may preclude any objective measures. Moreover, because these actual differences are only one factor in determining prices, the Commission should not restrict normal business decision-making processes in the regulations based on differing market conditions.

[Footnote Continued]

service for "technical" purposes, the manner in which that distributor bills, authorizes and collects is indeed "technical" and may be of sufficiently poor design and operation that customers would prefer not to deal with that distributor. Similarly, for facilities-based operators, the reception and quality of service provided by the operator may be sufficiently poor that the penetration or ability to sell to subscribers in the service area is directly affected, not by the pricing paid vendors for programming, but by the distributor's own business operation, or technical inferiority.

For example, the Commission already has noted that there are higher costs in delivering encrypted signals to the home satellite dish market and that such signals are less secure from piracy than delivery to the headend of a cable system. The "actual and reasonable" differences in "cost" include

> (1) considerably more marketing costs for the HSD market, which benefit all distributors regardless of their operations, as such costs encourage consumer awareness and desire for programming;
>
> (2) more and different "back office" costs considering the fact that thousands of authorizations and consumer problems must be dealt with on an hourly basis, 24 hours a day;
>
> (3) the costs of General Instrument's DBS Center including port and connections, as well as the separate VSAT system connecting the DBS Center with the programmers' individual uplinks; and
>
> (4) the substantial costs associated with detecting, eliminating and preventing piracy, including forward security costs.

These costs, however, may vary significantly from carrier to carrier, or from vendor to vendor, and thus would not be susceptible to mathematical precision, either as an absolute amount or even a percentage. Accordingly, the Commission should give maximum latitude to the programming vendors to permit them to exercise reasonable business judgment and only allow complaints against those business judgments which in fact caused significant harm and which by themselves could be considered "unfair."

Benchmarks on price regulation *per se* are unworkable given the market realities. In that regard, price differentials are not in of themselves unfair, but only when they are either "unreasonable" and a significant hindrance to the distributor, and harmful to consumers. Similarly, economies of scale are very difficult to measure at the different levels of subscribership for the various programming vendors. The different sizes of the subscribers' universe in the different markets may dictate a different approach to considering the economies of scale, as well as the other legitimate economic benefits reasonably attributable to a large number of subscribers being served by one customer. The guaranteed cash flow from a large customer is, by itself, one of the most legitimate economic benefits to be obtained in the capital-intensive business of satellite program distribution.

Importantly, these volume discounts are available to all customers.[37/] Quantification of these discounts may change with the economy, interest rates, the availability of investment capital, or performance in the equity markets. The extent of these discounts may also change with the growth and/or maturity of the various markets served by the vendor and they also may be impacted by the presence of additional competing programming services, and the success or failure of the programming service

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37/ Superstar recognizes that the Commission has found previously that merely offering volume discounts to all does not make them permissible under the Communications Act. Private Line Rate Structure, 97 FCC 2d at 947. However, volume discounts offered without marketing or technical restrictions on resale would not be objectionable. Id. at 947-48.

being sold. Most important to the Commission's inquiry in this general consideration of price differentials, are what "measures" could be employed as "proxies" for the various permissible causes of pricing differentials.

Programmers indeed do sell their programming services with conditions or arrangements allowing for prepayment discounts, performance discounts and other bonuses tied to the conduct of the particular distributor. NPRM ¶ 18. Again, because a particular distributor may have a more national marketing scope, that distributor may be able to obtain more subscribers and thus "perform" better than other distributors. That particular distributor would be penalized by this statute if programming vendors could not realize those particular performance criteria. The only measure that makes any sense would be an absolute pricing differential based on current practice.

Specifically, the Commission suggested four analytical "options" for developing objective standards to be used in analyzing potential incidents of discriminatory pricing practices. NPRM ¶ 19. Those "options" are:

(1) establishment of, and allowance for, a reasonable price differential, either within or beyond which price differentials, would be presumed discriminatory, (id. ¶ 20);

(2) utilization of the "discrimination" standard found at Section 202 of the Communications Act, 47 U.S.C. § 202(e) (id. ¶ 21);

(3) application of standards found in antitrust law, with particular emphasis on second line injury cases arising under Section 2(a) of the Clayton Act as amended by the Robinson-Patman Act (id. ¶ 22); and

(4) utilization of price comparisons as contained in other government regulations, with particular emphasis on the International Trade Commission's antidumping prohibitions (id. ¶ 23), or any other standards that parties consider appropriate, including combinations of the . . . options." (id. ¶ 19).

We will discuss these options seriatim.

Option 1: Allowance for a "reasonable" price differential.

At first blush, the Commission may believe this standard is the only one that could be applied objectively to allow quick and reasoned determinations regarding whether a distributor would have a valid complaint about the existence of a particular pricing differential. Emphasizing that not all price differentials are prohibited (indeed price differentials based on costs would not be actionable at all), price differentials not based on costs only would be actionable if they significantly hindered distribution of multi-channel programming to consumers. In other words, each programming vendor would have to be allowed to establish a "benchmark" price around which price differentials could be presumed to be based on costs and market differences. An additional price differential could be allowed above that which would be presumed not significantly harmful to the distributor. Differentials beyond these would be presumed harmful, but could be justified by the vendor.

This is an impossible task for regulating and administering. Different benchmark prices would have to be established in each of the cable, SMATV, MMDS and HSD markets. Each vendor would be allowed to add additional costs, or subtract costs saved as the case may be, from this benchmark price and then take an additional differential which would not significantly hinder any programming distributor from distributing its programming in any market. This may eliminate frivolous complaints at the outset by prohibiting any argument that these differentials of a few cents could somehow be actionable. It is important to recognize that a percentage calculation nonetheless still could yield very high percentages while in absolute terms these amounts are small.[38/]
However, assessing each vendor's business structure to allow for reasonable differentials would be inordinately time-consuming for both the vendors and the Commission. Accordingly, this option is likely unworkable.

Option 2: Section 202 of the Communications Act.

The Commission also has suggested that the standard for price discrimination in 47 U.S.C. § 202(a) may be the most appropriate here. NPRM ¶ 21. Superstar agrees that § 202 provides an

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38/ The Commission essentially has agreed with this approach. When previously comparing HSD rates of $1.00 per month with cable rates of $.02 -- $.20/month, differences of 80 to 98 cents, and differences of 500% to 5000%, the Commission noted that "[i]n absolute terms, the difference is not significant." First Scrambling Report, 2 FCC Rcd. at 1686.

appropriate standard for, at a minimum, analyzing all price differentials. Section 202 only prohibits unjust or unreasonable discrimination in the provision of "like" communication services. Accordingly, only where the services are "like", and unjust and unreasonable discrimination has occurred, would there be cause for complaint.[39/]

Some HSD distributors will argue that they do exactly what a "cable operator" or other FBO does. However, this is not the relevant inquiry, as the services actually received by HSD distributors and the FBOs are quite different.[40/] The Section 202 standards make the most sense where services are unlike because customers cannot legally or technically switch between them.

39/ Also under Section 202, the entity providing the service must be a "common carrier." Because none of the attributes of distribution of programming to the HSD market resemble "common carriage," Section 202(a) by its terms does not apply to the conduct of Superstar. See NRTC v. Southern Satellite Systems, Inc., 7 FCC Rcd. 3213, 3214 (1992). The Commission could still use the "like service" standard under Section 202 and apply it to the various programmers.

40/ In addition to differences in services provided, cable operators and HSD distributors operate under vastly different conditions. For example, the cable operator is subject to a franchise, in many instances limited in time, and regulated by local and federal authorities. Cable operators also have invested substantial amounts in headend equipment and operating plant. On the other hand, HSD third-party distributors have no investment in plant, do not own any equipment necessary to retransmit programming, are not subject to regulation or local governing bodies' franchising requirements and are essentially a middleman in the authorization process. See Second Report ¶ 19.

The standard used for making the initial determination of "likeness" is the "functional equivalency test" whereby services are not "like" if they are "different in any material functional respect." Id. The nature of the services as well as the perspective of the customer faced with choosing between differing services are significant. American Broadcasting Cos. v. F.C.C., 663 F.2d 133, 139 (D.C.Cir. 1980). Transmission technology and use of some of the same network or facilities for providing the service is for the most part irrelevant. Ad Hoc Telecommunications Users Comm. v. F.C.C., 680 F.2d 790, 795-96 (D.C. Cir. 1982).[41/] The services cannot be compared on the basis of superficial characteristics, but must focus on what functions or needs the customers perceive to be satisfied by the service under examination. Id., 680 F.2d at 797. Indeed, "customer perception" is the "linchpin" in the inquiry and services are functionally different if they "serve different subscriber communication needs." Id. at 796, quoting In the Matter of AT&T Co., 59 F.C.C.2d 671, 685 (1976).[42/] Only where the customers

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41/ For example, the identity of the uplink and transponder is not part of the determination of "likeness" in the delivery of services; the distribution of programming to HSDs requires the use of additional necessary facilities, such that the identity of the uplink and transponder does not make cable and HSD services "like". Also, no HSD distributor receives any signal or service from the uplinks or transponder as does a cable operator.

42/ Factors such as operational characteristics, use restrictions, geographic limitations, service features, facilities and customers' perceptions all should be considered. Ad Hoc Communications, 680 F.2d at 808 (McKinnon, J., concurring).

perceive the services to be "like" could they choose one over the other based on price, e.g., only where there is significant cross-elasticity of demand could the services be functionally equivalent. Ad Hoc Telecommunications, 680 F.2d at 796 nn.12, 13. This approach has been accepted and approved by the Commission in determining "likeness" under 47 U.S.C. § 202(a), and would make sense under Section 628. The Section 202 standard would preclude wooden comparisons of prices of "unlike" services and recognize legitimate price differentials in "distinctly different service[s] meeting distinctly different needs for distinctly different sets of customers". In the Matter of AT&T Communications, 5 F.C.C. Rcd. at 301. Accordingly, utilizing this standard would be beneficial in that it recognizes the essential distinctions in communications services justifying various pricing strategies in the markets.

Option 3: Antitrust standards.

In the NPRM, the Commission also requests participants to comment on the applicability of various antitrust standards to determining the existence or non-existence of price discrimination in the delivery of video programming. In its request for comment, the Commission placed particular emphasis on Section 2 of the Clayton Act,[43/] as amended by the Robinson-Patman Act,[44/]

43/ See Clayton Act (1914), 15 U.S.C. §§ 12 et seq.

44/ See Robinson-Patman Act (1936), 15 U.S.C. §§ 13, et seq.

which prohibits any person engaging in commerce from discriminating

> in price between different purchasers of commodities of like grade or quality . . . where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

NPRM ¶ 22. The Commission then noted that under the Robinson-Patman Act, "price difference may reflect either cost differences or changes in market conditions, thus allowing price differences by a firm where the lower price is intended to meet the equally low price of a competitor." Id. The Commission then stated that under the Robinson-Patman Act, price discrimination is prohibited only "where the effect may be to substantially lessen competition." Thus, price differences that work no harm against competition are not prohibited. Id.

With regard to the Robinson-Patman Act, the Commission expressed its opinion that the "secondary-line injury" cases arising under that Act would be most helpful in analyzing the discriminatory pricing problems that may arise in the video programming market. Also, the Commission seeks comment on the Robinson-Patman standard prohibiting harmful discrimination on goods of "like grade or quality" and how the standard may apply to video programming. As a final consideration under the proposed antitrust standards under Option 3, the Commission solicited commenters' views related to anticompetitive "predatory harm is necessary in order for discrimination to occur."

Superstar doubts that this option can be suitably developed to apply to the sale of "services" as opposed to "goods."[45/] The inherent difficulty in isolating the various cost factors and analyzing the myriad distribution methods precludes any standard developed in marketing and pricing "goods". Superstar urges the Commission to remain sharply attuned to the intricacies of the satellite broadcast programming market and to be skeptical of facile but ultimately misleading analogies to "product" markets subject to the Robinson-Patman Act.

For example, the Commission has requested comment on whether a programming service sold under different conditions or arrangements for various customers requires the Commission to consider such programming as "distinct in grade or quality" if analyzed under a Robinson-Patman-type analysis. NPRM ¶ 22. While the ultimate product, a video picture in an end-user's television set may ultimately be the same, the various delivery technologies of such programming have their own processes and cost issues, thus defying wooden application of price discrimination standards from antitrust laws.[46/] Whatever business

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45/ The Robinson-Patman Act has been held not to apply to the sale of cable television service. Satellite Television and Associated Resources, Inc. v. Continental Cablevision, 714 F.2d 351 (4th Cir. 1983), cert. denied, 465 U.S. 1024 (1984); H.R.M., Inc. v. Tele-Communications, Inc., 653 F. Supp. 645 (D. Colo. 1987).

46/ Of course, if vendors were violating Section 1 or 2 of the Sherman Act, 15 U.S.C. §§ 1-2, by combining to restrain trade or acquiring or extending monopoly power, this conduct would be separately actionable under the antitrust laws.

successes Superstar has enjoyed to date has been due to its superior strategic, planning and marketing abilities and a willingness to take entrepreneurial risk. The market for video programming services is extremely competitive and imposition of onerous antitrust-type analysis in the absence of clearly demonstrable monopoly power would be extremely harmful to the operation of Superstar, and the satellite broadcast programming industry in general, to the ultimate detriment of the public.

Because the video programming market environment in which Superstar operates is competitive and freely open to entry, the superstation programming market in no way resembles or can resemble the markets in which the "permanent and substantial price discrimination" at issue in the cases identified by the Commission can occur.[47/]

If, in fact, unjustified pricing differentials existed, the competitive nature of the market and ability of others to enter would eliminate those unjustified differentials. No additional antitrust analysis pertinent to price differentials should be imparted into § 628.

47/ See, e.g., Federal Trade Commission v. Morton Salt Co., 334 U.S. 37 (1948).

Option 4: **Other regulatory approaches.**

In its request for comment under this option, the Commission requested comment on price comparisons contained in other areas of regulation, with particular mention of the "anti-dumping" protections found in the regulations of the International Trade Commission ("ITC"). See 19 C.F.R. Part 353. Those regulations generally are concerned with the sale of exported goods in the United States at artificially depressed prices, which may have the effect of damaging American producers of the product at issue. ITC anti-dumping regulations establish a structure by which the ITC can estimate cost differentials between his country and the country of export. While contemplation of the anti-dumping models may provide certain fruitful analogies to alleged price discrimination in the satellite programming market, more pertinent, and ultimately helpful analyses is set forth in Option 2.

Whatever option, or amalgamation of options ultimately is chosen, it should reflect the actual circumstances in which the programming sold. If in fact, the like service standard under the Communications Act is adopted, harm to consumers should still be considered the most relevant factor. Absent such harm, price differentials should not be considered actionable.

IV. IMPLEMENTATION OF RULES

In the NPRM, the Commission tentatively concludes "that any pricing policies or restrictions developed to implement Section 628 should not be retroactively applied against existing contracts." NPRM ¶ 27. The Commission's tentative conclusion is sound both in law, and in policy, and is supported wholeheartedly by Superstar. Section 628 should have no retrospective effect on existing contracts, as the Commission has tentatively and correctly concluded. The regulations adopted pursuant to Section 628(c) should apply only to contracts executed after the effective date of such regulations. The regulations, furthermore, should not apply to renewals of contracts executed prior to the effective date of regulations adopted under Section 628(c).

A. Section 628 And The Implementing Regulations Should Be Prospectively Applied

Prospective application of laws, statutes and administrative agency regulations is one of the most deeply rooted concepts in United States law. As early as 1806, the United States Supreme Court stated that "[w]ords in a statute ought not to have a retrospective operation, unless they are so clear, strong, and imperative, that no other meaning can be annexed to them, or unless the intention of the legislature cannot otherwise be satisfied." United States v. Heth, 7 U.S. (3 Cranch) 399, 413 (1806). The Supreme Court has reaffirmed this most basic of principles many times over the years. See, e.g., Murray v. Gibson, 56 U.S. (15 How.) 421, 423 (1854); Union Pacific R.R. Co. v. Laramie Stock Yards Co., 231 U.S. 190, 199 (1913); Miller v. United States, 294 U.S. 435, 439 (1935). See also United States v. Security Indus. Bank, 459 U.S. 70, 79 (1982) ("The principle that statutes operate only prospectively * * * is familiar to every law student.").

Very recently, and consistent with its previous holdings, the Supreme Court has stated that "[r]etroactivity is not favored in the law. * * * Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires that result." Bowen v. Georgetown Univ. Hospital, 488 U.S. 204, 208 (1988). See also Kaiser Aluminum and Chemical Corp. v. Benjamin, 494 U.S. 827, 841 (1990) (Scalia, J. concurring) ("[S]ince the beginning of the Republic and indeed since the early days of the common law: absent specific indication to the contrary, the operation of nonpenal legislation is prospective only.").

This rule of law, moreover, has been scrupulously followed by the United States Court of Appeals for the District of Columbia Circuit. See e.g., Wagner Seed Co., Inc. v. Bush, 946 F.2d 918, 924 (D.C. Cir. 1991), quoting Bowen, 488 U.S. at 208, cert. denied, 112 S.Ct. 1584 (1992); Alpo Petfoods, Inc. v. Ralston Purina Company, 913 F.2d 958, 963-64 n.6 (D.C. Cir.

1990); Rodulfa v. U.S., 461 F.2d 1240 (D.C. Cir. 1972), cert. denied, 409 U.S. 949 (1972); International Brotherhood of Boilermakers v. NLRB, 316 F.2d 373, 374 (D.C.Cir. 1963).48/ Thus, given the long-standing and fundamental presumption against retroactive application of statutes, and absent specific language in the law requiring general retroactive application, Section 628, and all regulations adopted thereunder, must be applied prospectively only.49/

With regard to establishing an effective date for regulations adopted under Section 628(c), Superstar suggests that the effective date be 180 days from the date any non-appealable order is rendered with respect to the constitutionality of Section 628

48/ The D.C. Circuit, in the past, specifically has upheld the FCC when the Commission has ruled that provisions of Communications Act Amendments had prospective application, only. Monogahela Power Co. v. F.C.C., 655 F.2d 1254 (D.C. Cir. 1981) (1978 Amendments to Communications Act granting Commission jurisdiction over cable television pole attachments have prospective application only).

49/ While Section 628 contains a narrow prohibition on exclusive contracts entered into after June 1, 1990, and on renewals after the October 1992 date of enactment of exclusive contracts initially executed prior to June 1, 1990, such limitations fall far short of an authorization of, or invitation to, the Commission to promulgate regulations under Section 628 with retrospective applicability. See Section 628(h).

That the Act, moreover, contains other provisions clearly intended to operate retroactively, especially in the must carry, retransmission consent and rate regulation sections of the Act (see e.g., 47 U.S.C. §§ 534, 535, 325(b)(2)(d) and 543(j)), only reaffirms this heavy presumption that regulations to be adopted under Section 628(c) are to apply prospectively only.

or the propriety of the Commission's regulations. Such a timetable would permit renegotiation of existing contracts, if necessary, and consideration of the new rules in existing negotiations. Any claim of discrimination arising under the new rules adopted under Section 628 must stem solely from conduct, transactions or occurrences transpiring after the rules' effective date.

V. ENFORCEMENT

The Commission is also required to promulgate regulations to provide for expedited review of complaints challenging conduct under Section 628 as well as procedures for data collection and provision for penalties against persons filing frivolous complaints.

A. Procedural Rules

Superstar agrees with the Commission's general proposal to adopt rules whereby disputes would be resolved without a hearing unless there are substantial material issues of fact that cannot be resolved by the staff or through stipulation. We agree that the complaint process should follow those rules used currently for processing common carrier complaints under Section 208 of the Communications Act. 47 C.F.R. §§ 1.720-1.734. The Commission is considering amendments to those rules in a rulemaking commenced last year.[50/] Superstar, as well as a number of other

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50/ Notice of Proposed Rulemaking, 7 FCC 2d 2042 (1992).

superstation carriers participated and filed comments in that proceeding. Because the Commission has not yet adopted new rules, we cannot determine whether or not the new Complaint rules under Section 208 would be appropriate. In any event, we incorporate by reference the Comments of United Video, Inc., Superstar Connection et al. filed April 21, 1992 and Reply Comments filed May 11, 1992 in CC Docket No. 92-26. These comments deal with the pleading process, as well as discovery motion practice and the like.

B. Benchmarks

In addition, the Commission sought comments in this Section of the NPRM concerning objective criteria or presumptions for evaluating complaints. We believe it would be an impossible task to set benchmarks that will accurately reflect the various differences in business operations of the carriers or the dynamics of the programming distribution markets.

Difficulties in isolating causation issues preclude the use of penetration benchmarks as evidence of actionable discrimination. Because the Act's stated purpose is to increase competition and diversity by increasing the availability of satellite programming to persons in rural and other areas, penetration benchmarks could only be used to eliminate particular claims. If other similarly situated distributors are "penetrating" the market, at the same pricing level, then the unsuccessful distributor should not have a complaint against the programming vendor. Because so many technical factors impact penetration levels, it would not be fair or wise to establish an absolute rule concerning penetration if in fact one operator falls above or below the benchmark. Because there may be too many other factors affecting the penetration to make any fair inference of discrimination, the differential itself cannot be dispositive.

C. Remedies

As to remedies, Section 628(e)(1) provides that the Commission has the power to order "appropriate" remedies including the power to establish prices. We believe this approach will be sufficient under Section 628 and there is no need for an award of damages. In any event, if damages were to be awarded, they should be only for profits lost to the "favored" distributor. In cases under Section 202(a), the Commission has found that the "difference between one rate and another is not the measure of damages...." I.C.C. v. United States, 289 U.S. 385, 389 (1933); Illinois Bell Telephone Co. v. AT&T, 66 RR2d 919 n.13 (1989). This standard should be applied in Section 628 proceedings.

D. Frivolous Complaints

It is important that the Commission provide penalties against persons filing frivolous complaints under Section 628.

The Commission should adopt a provision allowing for the award of attorney fees and expenses at any stage in the proceeding, including cash forfeitures to the Commission or Treasury, and that any errors or unsubstantiated allegations would subject a complainant to these penalties. In that regard, the Commission should consider adopting a standard similar to that under Rule 11, Fed. R. Civ. P., that all allegations of fact must be well-grounded and the complaining party must have a reasonable basis for making these statements. Forfeiture amounts should be directly proportional to the programming vendor's expense in defending against the complaint but a minimum should be set sufficiently high to discourage frivolous complaints. The Commission also should have the authority to impose its own fines against the complainant, payable to the Commission, to account for the resources expended on administering the process.

VI. OTHER ISSUES

Other issues of importance concern data collection under Section 628(f)(2). There is no doubt that contracts and documents reflecting terms and conditions, costs and pricing are confidential within the meaning of Freedom of Information Act and are thus protected from disclosure at the Commission. There has been no shortage of FOIA proceedings instituted by a competitor and customer of Superstar which has twice resulted in decisions finding that these contracts and costs data are entitled to confidential treatment.[51/] Accordingly, any data collected from multichannel video program providers, including contracts, marketing materials or any other documents concerning costs and prices, should not be disclosed and should not be subject to public availability. Any such disclosure would allow competitors an unfair look inside of the programming vendor's business operations and marketing strategies. Any data that may be collected during a Section 628 complaint proceeding should also be subject to a protective order and non-disclosure with all appropriate sanctions including monetary forfeitures and other measures imposed for any violations. The current procedures appear sufficient to protect the programmers' proprietary information.

Respectfully submitted,

SUPERSTAR CONNECTION

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January 25, 1993

51/ Letter from Gerald Brock to John B. Richards, dated August 22, 1989 (FOI Control No. 89-88); In re National Rural Tel. Coop., 5 FCC Rcd. 502 (1990); Letter from Richard M. Firestone to John B. Richards, dated October 9, 1990 (FOI Control No. 90-200).

Exhibit # 1

SATELLITE SUPERSTATION BROADCAST PROGRAMMING VENDORS ARE GREATLY DIFFERENT THAN CABLE NETWORKS

THE SUPERSTATION MARKET IS MUCH MORE OPEN TO COMPETITIVE ENTRANTS

	CABLE NETWORK	SUPERSTATION VENDOR
• Owns Exclusive Right of Distribution	YES	NO
• Sells National Ads	YES	NO
• Subject to Syndex Rules	NO	YES
• Cable Ops Must Pay Copyright on Top of Subscriber Fee	NO	YES
• Subject to Legal/Regulatory Blackouts	NO	YES
• Capital Requirements for Start-up	HIGH	LOW
• Subject to Pricing Restriction under 1934 Communications Act	NO	YES

Exhibit 1

Exhibit # 2

THE SATELLITE SUPERSTATION BROADCAST PROGRAMMING VENDOR BUSINESS IS NON-EXCLUSIVE AND HIGHLY COMPETITIVE

CARRIER
NETLINK
SUPERSTATIONS
- KUSA - ABC
- KCNC - NBC
- KMGH - CBS
- KRMA - PBS
- KWGN

C-BAND

CARRIER
UVI SUPER-STAR
SUPERSTATIONS
- WGN *
- WPIX *
- KTVT *
- KTLA

C-BAND

CARRIER
EASTERN MICRO-WAVE
SUPERSTATIONS
- WWOR *
- WSBK *

C-BAND

CARRIER
PRIME-TIME 24
SUPERSTATIONS
- WRAL - CBS
- WABC - ABC
- WXIA - NBC

C-BAND

CARRIER
PRIME-STAR
SUPERSTATIONS
- WGN *
- WPIX *
- KTLA *
- WTBS *
- WWOR *
- WSBK *
- KTVU

K-BAND

CARRIER
SOUTHERN SATELLITE SYSTEMS
SUPERSTATIONS
- WTBS *

C-BAND

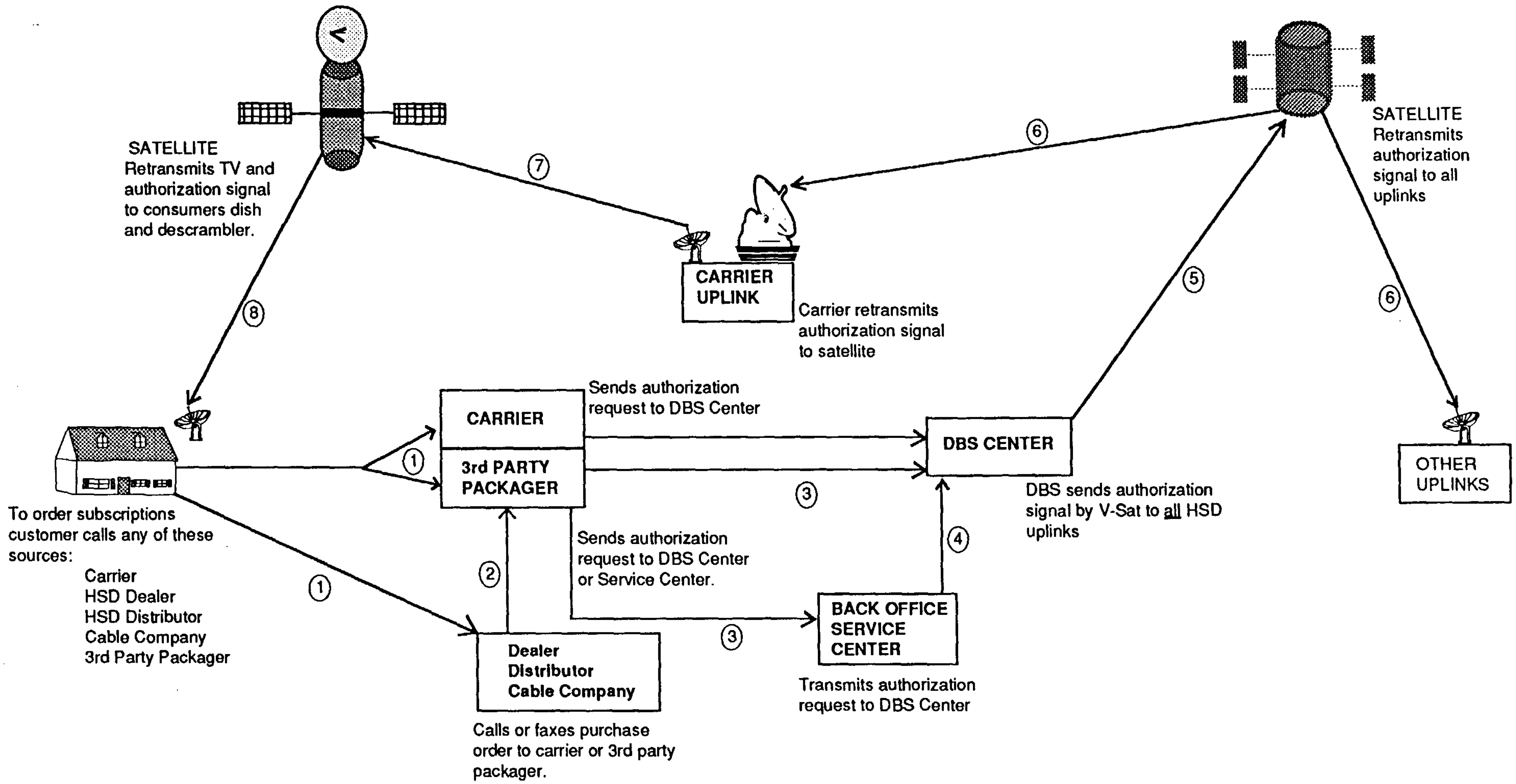
* TRANSMITTED ON SEPARATE SATELLITES

Exhibit 2

SIXTEEN SUPERSTATIONS ARE AVAILABLE FROM SIX CARRIERS TO CONSUMERS FROM THE FACILITIES-BASED OPERATORS AND HSD CLASSES OF SERVICE

Exhibit 3

HSD Customers Superstation Authorization "Unlike"Cable



CABLE CUSTOMER AUTHORIZATION UNLIKE HSD

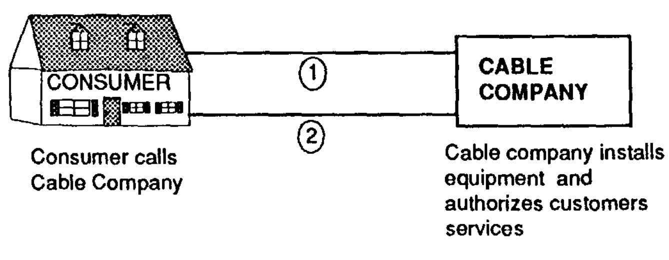


Exhibit 3